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IN THE

Supreme Court of the United States

October Term 1975

No. 75-629

ROBERT S. KLINE and JEANNE KLINE,

Petitioners,

v.

ANNETTE HEYMAN, individually; ANNETTE HEYMAN, as executrix of the Estate of Lazarus S. Heyman, deceased, late of Danbury, Connecticut; SAMUEL J. HEYMAN; ABIGAIL HEYMAN; TAMPA MALL, INC., a Florida corporation,

Respondents

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Second District

BRIEF FOR RESPONDENTS IN OPPOSITION

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BRIEF FOR RESPONDENTS IN OPPOSITION

Opinion Below

The opinion of the District Court of Appeal is reported at 309 So.2d 242. Certiorari was denied by the Supreme Court of Florida at 317 So. 2d 767.

Jurisdiction

The claimed basis for jurisdiction is set forth in the petition.

Questions Presented

Whether the Florida courts erred in according the judgment of the United States District Court of Connecticut res judicata or collateral estoppel effect in a Florida action between the same parties or their privies on the stated grounds that:

a. the prior judgment was not subject to collateral attack for want of jurisdiction, as the jurisdictional question was fully litigated in the Connecticut forum, and

b. the Connecticut court had jurisdiction to adjudicate petitioners' rights under a Connecticut employment contract and option assignment which were essential to the Connecticut court's decision and to the Florida decision.

Constitutional and Statutory Provisions Involved

The claimed pertinent provisions of the United States Constitution (Art. IV, § 1) and Code (62 Stat. 947, 28 U.S.C. § 1738) are set forth in the petition at pages 3-4.

Statement

This is a petition for certiorari by the plaintiffs[1] in the trial court from a decision of the District Court of Appeal of Florida, Second District, affirming a summary judgment entered by the Circuit Court for Hillsborough County, Florida. The Florida courts determined that the petitioners are barred by reason of a prior jury verdict and final judgment of the United States District Court for Connecticut between the same parties and their privies from relitigating their claim for certain relief including the imposition of a constructive trust on land in Hillsborough County, Florida.

Robert S. Kline and Jeanne Kline, his wife, brought this suit in Florida against Annette Heyman, individually and as Executrix of the estate of Lazarus S. Heyman, Samuel J.

1 In this brief the petitioners will sometimes be referred to as the "plaintiffs." The term "defendants" will sometimes be used with regard to the respondents; "PX" will be used to refer to the appendix filed by petitioners; "RX" will be used to refer to the additional appendix filed by respondents; "R" will be used to refer to the original record filed in the District Court of Appeal of Florida.

Heyman, Abigail Heyman, Tampa Mall, Inc., and others who during the course of the proceedings were dismissed from the suit. They sought cancellation of a deed from Mrs. Heyman to Tampa Mall, Inc. and a declaration that Mrs. Heyman held title to the property described in the deed in trust for them to the extent of a 15% interest. They also sought damages against the Heymans. (R1-165)

The trial of the instant case, which was set for May 21, 1973, was postponed because of the retrial of an action in the United States District Court for Connecticut which involved similar issues and many of the same attorneys and the same parties or their privies. The Connecticut jury returned a special interrogatory verdict adverse to the petitioners (RX A-1) and judgment was entered pursuant to the verdict. (PX C1-3). The Connecticut judgment was not appealed and is, therefore, final. Upon an appropriate record, the Florida trial judge then entered a final summary judgment against the petitioners, holding that the jury verdict and the judgment entered in Connecticut was res judicata and estoppel by judgment of the issues pending before him. (PX D1-5)

In the Connecticut action Annette Heyman had sued Robert S. Kline for damages for breach of his employment contract and for a declaratory judgment that Kline had no interest in the Tampa property, and that Annette Heyman did not hold a 15% interest in the property in trust for him. (R 177 et seq., 378) Kline counterclaimed against Mrs. Heyman demanding that Mrs. Heyman be decreed a constructive trustee and that he be decreed "the equitable owner of a fifteen percent (15%) interest in the said real estate". (R 1387) In addition, Mr. Kline's Connecticut counterclaim demanded compensatory damages for breach of contract and punitive damages for tortious conduct in the nature of an alleged malicious attempt to deprive him of his 15% alleged interest in the land. (R 1387) In his "Count for punitive damages", Mr. Kline contended that Mrs. Heyman had breached her ficuciary relationship by excluding

him from participation in the Tampa property and in breaching the employment contract, and that she never intended to honor his 15% interest in the property. (R 1398)

The special interrogatory verdict clearly reflects the issues, including the rights asserted by the Kline counterclaim, which were tried in that case. The interrogatories answered by the jury included these: (RX A-2-3-4)

* * * *

Interrogatory No. 2

Was the defendant, Robert S. Kline's right to invest and to participate in the Tampa property conditioned upon his promise to faithfully perform his contractual employment obligations to the plaintiff-Heymans?

Yes (x) No ( )

Interrogatory No. 3:

Did Robert S. Kline materially breach his employment agreements with the plaintiffs, Annette Heyman, individually, and as Executrix of the Estate of her late husband, Lazarus S. Heyman, and the Prudential Management Company?

Yes (x) No ( )

Interrogatory No. 4:

(a) Does Robert S. Kline presently have a right to a 15% interest in the Tampa property?

Yes ( ) No (x)

* * * *

Interrogatory No. 8:

Is Robert S. Kline entitled to receive punitive damages?
Yes ( ) No (x)

* * * *

The declaratory judgment entered upon the verdict on June 7, 1973 implemented these findings in favor of the plaintiffs, and denied the Kline counterclaim in all respects on its merits. (R 1542, PX C1-3)

The underlying facts are these: Lazarus S. Heyman was a Connecticut real estate developer. On March 31, 1968, Mr. Heyman employed Mr. Kline to assist him in connection with the acquisition and development of real estate. (R 20) In addition to a specified salary, his written employment agreement provided that Kline would have the right to invest in Heyman's developments up to a 15% interest. (R 20) The first development to which Kline turned his attention was a 73-acre tract of land in Tampa upon which Heyman already had an option to purchase. (R 22)

Mr. Heyman died on May 22, 1968. (R 874). Prior to Mr. Heyman's death, Kline had notified him that he wished to participate in the Tampa development. Mrs. Heyman was appointed Executrix of her husband's estate, and Samuel Heyman, the decedent's son, assumed primary responsibility for the handling of his father's business affairs. Pursuant to an oral understanding with the Heyman's, Mr. Kline continued as an employee of the Heyman's. (R 879)

On July 16, 1968, at the request of her son, Samuel, who was an attorney, Mrs. Heyman signed a paper in the form of an assignment of option whereby the assignees were said to be herself, individually, 29%, Samuel Heyman 28%, Abigail Wiener (Mr. Heyman's other child) 28%, and Robert S. Kline 15%. (R 30) Mr. Kline later produced a copy of this assignment,

but the Heyman's contended he had stolen it from their files. (R 954K-R) In any event, Samuel Heyman retained the original instrument in his files, and it was never recorded or delivered. (R 954K)[2]

On August 13, 1968, Annette Heyman exercised the option to purchase the Tampa property. (R 35) On September 9, 1968, in Connecticut, Mrs.Heyman entered into a new employment agreement with Robert Kline which called for an increased salary. (R 36) As in the previous agreement, Mr. Kline was given the right to invest up to 15% in any of the Heymans' real estate ventures. This agreement indicated that Kline had opted to participate to that extent in the Tampa venture. (R 36) It was previously understood that the final decisions with respect to the handling of the property would be made by the Heymans. (e.g., R. 1057-9, 943) Kline reimbursed Mrs. Heyman for 15% of the money paid to keep the option alive. (R 954E) On December 9, 1968, the owners of the Tampa tract conveyed the land to Annette Heyman. In the meantime, the relationship between Kline and the Heymans had deteriorated in that the Heymans discovered numerous instances of dishonesty on the part of Kline. They also accused Kline of having driven away the Heymans' key employees through a course of objectionable conduct. As a consequence, the Heymans discharged Kline on January 17, 1969. (R 502, et seq.)

In August of 1969, Annette Heyman entered into a lease with Tampa Mall, Inc. effective as of February 1, 1969. (R 40 et seq.) Tampa Mall, Inc. is a wholly owned subsidiary of The DeBartolo Corporation, one of the nation's largest shopping center developers. Pursuant to this lease, Tampa Mall, Inc. was to build a shopping center on the property. On September 16, 1969, Robert Kline executed and recorded an instrument whereby he purported to assign his interest in the Tampa property to himself and his wife, Jeanne S. Kline. (R 9)

---

2 There was a dispute over whether a copy of the option had been delivered to Mr. Kline. The Connecticut jury resolved this issue adversely to Mr. Kline. (R 1511) (RXA-2)

In February of 1970, Mr. Heyman filed a suit in the United States District Court for Connecticut alleging Mr. Kline had breached his employment contract and seeking a declaration that by reason of such breach he had no claim to any interest in the Tampa property. (R 177 et seq.) The case went to trial in Connecticut without a jury. District Judge Timbers held that Kline had breached his employment contract by reason of various acts of disloyalty and dishonesty, and that as a result he lost any contractual right to invest in the Heyman's real estate ventures, including the Tampa property, *Heyman v. Kline*, 344 F. Supp. 1088 (D. Conn. 1970). The final judgment was entered in September of 1970. Mr. Kline filed an appeal but did not supersede the judgment. (R 998, 1042)

On July 12, 1971, Mrs. Heyman sold the Tampa property to Tampa Mall, Inc. for $2,500,000.00. (R 1039) The conveyance was by quitclaim deed with mortgages for the deferred payments running to Mrs. Heyman. Thereafter, in March of 1972, the U.S. Court of Appeals reversed the Connecticut judgment on the premise that Mr. Kline had not waived his right to jury trial and remanded the case for a trial before a jury, *Heyman v. Kline*, 456 F.2d 123 (2d Cir. 1972). This Court denied certiorari. The instant suit was filed on October 11, 1972. The Connecticut action was reassigned to District Judge Clarie and was retried before a jury commencing on May 1, 1973.

Following the entry of the Connecticut verdict and judgment against Kline, the Florida trial judge in the instant case considered the question of how that judgment affected the Florida proceedings. The Judge concluded that the Connecticut suit was a proceeding *in personam* to construe the terms of the employment contract and the rights of the parties thereto and that it was within the jurisdiction of the Connecticut Court to determine such rights. He held that since the Kline counterclaim in Connecticut was substantially the same as the complaint before him, the outcome of the Connecticut suit had res judicata

or estoppel by judgment effect upon the issues in the Florida litigation. He observed that he was not passing upon the question of whether the Connecticut court had erred in ruling that the contractual interest of Kline in the Florida land was not severable from the Connecticut employment contract, because he concluded that it was within the jurisdiciton of that court to adjudicate that question, subject to Kline's right of appeal in Connecticut. (PX D1-5)

The Connecticut judgment was not appealed. Instead the Klines appealed the Florida summary judgment to the District Court of Appeal of Florida, which, on February 26, 1975, affirmed, concluding that the Connecticut judgment fully covered all issues involved in the Florida litigation, that the question of the jurisdiction of the Connecticut court was "expressly, fully and fairly litigated" in that court; and that the parties in the instant case are either the same or were in privity with named parties in the Connecticut suit so that all parties in the Florida action are bound by the Connecticut judgment. *Kline v. Heyman*, 309 So.2d 242 (Fla.App. 2d Dist. 1975). The Florida Supreme Court denied certiorari. 317 So.2d 767 (Fla. 1975).

ARGUMENT

The petition for certiorari should be denied because, under settled principles of res judicata and collateral estoppel or estoppel by judgment, the final judgment in Connecticut bars every claim that the Klines had against Mrs. Heyman and every claim that they had against Tampa Mall, Inc.[3] This is so because the issues and claims asserted in this action are exactly those that were asserted in the Connecticut action. The Kline claim against Tampa Mall, Inc. was wholly predicated upon the claim against Mrs. Heyman. Every fact and issue that is critical to the

3 The opinion below demonstrates that Tampa Mall, Inc. is in privity with Mrs. Heyman, having received a conveyance pendente lite, and that Mrs. Kline participated in, was represented in, and is also bound by the Connecticut judgment. See 309 So.2d at 244-5.

establishment of the petitioners' claims in the instant case was fully litigated and decided adversely to the petitioners by both the special verdict and the final declaratory judgment in Connecticut. There simply is nothing new to litigate in the instant case. And the Florida decisions do not conflict with or "entangle" any decisions of this court.

A. Petitioners Cannot Collaterally Attack The Connecticut Judgment, Because Juridiction Was Fully Litigated In That Forum.

Petitioners' main contention appears to be that the Connecticut judgment should be disregarded because that court did not have jurisdiction to adjudicate issues which affected claims to Florida real estate. This argument can be disposed of at the threshold. The question of the Connecticut court's jurisdiction over these matters was litigated in Connecticut. Having lost the issue there, the petitioners cannot retry the Connecticut court's jurisdiction by collateral attack.

The issue of jurisdiction over the subject matter of the Connecticut proceeding was vigorously contested in that case from the outset; and the United States Court of Appeals for the Second Circuit in *Heyman v. Kline*, 456 F.2d 123, 127 n. 3 (2d Cir. 1972), in the course of remanding for a jury trial, held that a court of equity could grant any necessary equitable relief in:

> "***a case in which the relief requested might affect title, but title is dependent on the construction of a contract between two parties."

After the remand, Kline continued to vigorously attack the jurisdiction of the Connecticut court, contending that the sale of the land to Tampa Mall in July 1971 made moot all questions relating to the land. The Connecticut District Court held these questions inseparable from the other matters before it for decision, overruled the Kline objections, and submitted all questions relating to the relationship between Heyman and

Kline to the jury for its determination by special verdict. The Special Interrogatories submitted to the jury in Connecticut squarely presented the questions of whether the right to participate in the Tampa property was dependent on faithful performance of the employment relationship, whether Mr. Kline had breached these obligations, and whether he presently had a right to a 15% interest in the Tampa property. The answers, of course, were adverse to the petitioners. They cannot now contend that those questions were not before the Connecticut jury for decision, and that they did not contest their being considered.

Whether the decisions of the Connecticut court were right or wrong, (and we believe them to be a sound *in personam* determination) it is clear that all objections to subject matter jurisdiction were vigorously raised in Connecticut, and determined adversely to Kline, and not appealed. These decisions by the District Court as to its jurisdiction conclude the matter so far as the effect of that judgment in the Florida courts is concerned, because of the recognized rule that courts will not collaterally attack a juridictional determination where that question has been fully litigated in the foreign tribunal.

The argument that the subject matter jurisdiction of the Connecticut federal court can be collaterally attacked, de novo, because this case involves Florida land is without merit. This court established in *Durfee v. Duke*, 375 U.S. 106 (1963) that once the question of subject matter jurisdiction has been completely litigated in one state, it may not be retried in a second state, even though the judgment involved land in the second state. That decision was precipitated by the fact that the main channel of the Missouri River, the middle of which formed the Missouri-Nebraska boundary line, had shifted so that certain bottom land which was once an island in the river was on the Missouri side rather than on the Nebraska side of the

4 Indeed they do not, for in their Petition for Certiorari filed in this Court they concede that they did vigorously and unsuccessfully contest subject matter jurisdiction in Connecticut. See pp. 8 and 17.

boundary. Two Nebraska citizens, who claimed the land by virtue of a Nebraska foreclosure, brought suit in a Nebraska court against a Missouri citizen who claimed the land by virtue of a Missouri swampland patent. The principal issue litigated was whether the shift in the river's course resulted from avulsion so that under Nebraska law the land remained part of Nebraska or from accretion so that under Nebraska law the land became part of Missouri. The Nebraska court determined that it had jurisdiction of the subject matter and found that the shift in the river's course resulted from avulsion, thereby quieting title in the Nebraska citizens. The Supreme Court of Nebraska affirmed.

Rather than seeking to review that decision in the Supreme Court of the United States, the Missouri citizen brought a new, but similar, action against the Nebraska citizens in a Missouri state court. The suit was removed to a Federal District Court which dismissed the complaint. The Court of Appeals for the Eighth Circuit reversed, holding that normal res judicata principles were inapplicable because the controversy involved land.

On certiorari, this Court reversed the Eighth Circuit, rejecting the contention that there was an exception to the "rule of jurisdictional finality" with respect to cases in one state involving real property in another state, and said (375 U.S. at 111):

> "However, while it is established that a court in one State when asked to give effect to the judgment of a court in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of this Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit--even as to questions of jurisdiction--when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment."

This case sets out a general rule that once a question of subject matter jurisdiction has been litigated, the result is conclusive on any subsequent litigation. It is absurd to argue, as Petitioners apparently do, that it is limited to shifting-river cases or cases where land is or might be in the state of the first forum. In *Durfee v. Duke* this Court accorded full faith and credit to a decree of a Nebraska state court quieting title to land, even though the Missouri District Court was convinced that the land was situated in Missouri and that therefore the Nebraska court was without jurisdiction of the subject matter, stating (375 U.S. at 115):

> "It is argued that an exception to this rule of jurisdictional finality should be made with respect to cases involving real property because of this Court's emphatic expressions of the doctrine that courts of one State are completely without jurisdiction directly to affect title to land in other States. This argument is wide of the mark. Courts of one State are equally without jurisdiction to dissolve the marriages of those domiciled in other States. But the location of land, like the domicile of a party to a divorce action, is a matter 'to be resolved by judicial determination.' *Sherrer v. Sherrer*, 334 US, at 349, 92 L Ed at 1435, 1 ALR2d at 1361. The question remains whether, once the matter has been fully litigated and judicially determined, it can be retried in another State in litigation between the same parties. Upon the reason and authority of the cases we have discussed, it is clear that the answer must be in the negative."

See also *Chicot Co. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940); and *Haas v. Haas* 59 So.2d 640 (Fla. 1952). And, of course, this case involving *in personam* rights is controlled by that rule.

The Florida courts in the instant case have recognized that the Connecticut federal court had litigated and determined that it had jurisdiction to try these issues and that the issues themselves had been fully and fairly tried. Thus, they properly

concluded that there was no basis for a retrial of the same issues in a Florida court, because of the doctrine of *Durfee v. Duke, supra.*

Petitioners' argument that the decision below conflicts with *Fall v. Eastin*, 215 U.S. 1 (1909), *Carpenter v. Strange*, 141 U.S. 87 (1891) and *Olmstead v. Olmstead*, 216 U.S. 386 (1910) is without merit. Thoses cases, all decided long before *Durfee v. Duke, supra*, did *not* involve the effect of a prior adjudication of jurisdictional issues. Therefore the application in the instant case of the *Durfee v. Duke* rule that a determination of subject matter jurisdiction is itself entitled to res judicata effect in a subsquent proceeding creates no conflict or "entanglement." See 375 U.S. 115 at n. 14, and text quoted above.

B. The United States District Court in Connecticut Had Jurisdiction to Adjudicate the Klines' Rights Under the Employment Contract and Option Assignment.

Since the jurisdiction of the Connecticut court was litigated and determined in that forum, the court's jurisdiction cannot be collaterally attacked in Florida. Moreover, even if the Florida courts had taken it upon themselves to decide whether the Connecticut court was right, it is clear that the Connecticut court did have jurisdiction to determine the Klines' rights under the employment agreement and the option agreement (the instruments under which Kline made his claim to an interest in the land), and that decision on these issues precludes the instant action wherein a right to the land must be determined by the rights under the relationship between Heyman and Kline already decided by the Connecticut court.

The United States District Court for Connecticut had jurisdiction over the person of Mr. Kline and over the subject matter of the declaratory decree controversy. That proceeding was not an action to quiet title to Florida land, but was an *in personam* action to determine the rights of Kline and Heyman under the

employment relationship and contracts, and to determine whether the alleged right of Kline to participate in the Tampa venture had been terminated by his violation of the contracts. It is familiar law that a court determining *in personam* rights between parties may enter orders which indirectly affect real estate in foreign jurisdictions. The law is clear that:

> ". . . the findings embodied in an in personam decree purporting only indirectly to affect out-of-state real property are entitled to res judicata or collateral estoppel effect". Annot., 32 A.L.R. 3d 1330, 1333 (1970)

See also *Massie v. Watts*, 10 U.S. (6 Cranch) 148, 3 L.Ed. 181 1810); *Heyman v. Kline, supra*, 456 F.2d 123 (2d Cir. 1972); *Fraser v. Cohen*, 159 Fla. 253, 31 So.2d 463 (1947); *Jackson v. Jackson*, 129 So.2d 692, 693 (Fla.App. 2d Dist. 1961); and *Frick v. Hartford Life Ins. Co.*, 98 Conn. 251, 119 Atl. 229, 232 (1922).

The Connecticut verdict and judgment are controlling in the instant case, not because they purport to determine the title to Florida real estate, but because they settle the exact factual questions and legal issues which control this case. It is immaterial whether the Connecticut court held that Mr. Kline was not entitled to an interest in real property. What is material is that the Connecticut court determined by declaratory judgment the factual and legal rights and issues upon which the claims of the Klines are here predicated.

It should be remembered that we are considering the extent of the jurisdiction of the District Court in Connecticut to render a declaratory judgment as to *in personam* rights under a Connecticut contract and to decide a counterclaim for, *inter alia*, punitive damages for acts in connection with that contract and the property. The statutory requisites for bringing a quiet title suit in Florida are immaterial. The suit in Connecticut was for a declaratory decree under 28 U.S.C. §2201. This statute has been constantly given a liberal construction so as to effectuate jus-

tice. See *e.g., Allstate Ins. Co. v. Employers Liability Assur. Corp.*, 445 F.2d 1278 (5th Cir. 1971); *Simmonds Aerocessories v. Elastic Stop Nut Corp.*, 257 F.2d 485 (3d Cir. 1958). Even after her conveyance to Tampa Mall, Inc., Mrs. Heyman had a demonstrable interest in the property by reason of having received mortgages on it as security for the purchase price. And the Kline counterclaim for damages, claiming *inter alia*, that Mrs. Heyman had maliciously and tortiously deprived Kline of his interest in the land, presented an issue to the court and jury that materially involved the relationship between the land and the employment relationship. Moreover, under Rule 25(c), Federal Rules of Civil Procedure, Mrs. Heyman's conveyance to Tampa Mall, Inc. during the course of the Connecticut litigation did not preclude that court from going on to adjudicate the *in personam* rights of the parties.

The Connecticut court determined that it had jurisdiction to adjudicate the matters covered by its Final Judgment. While we do not believe that it was within the province of the Florida courts to collaterally review that determination, we have no hesitation in submitting that if they had, they would have reached the same conclusion.

CONCLUSION

The petitioners have more than had their day in court. After a fair, four-week jury trial in the United States District Court for Connecticut, Mr. Kline, who there represented Mrs. Kline as well, received an adverse verdict in the form of clear answers to special interrogatories. By that verdict and a subsequent declaratory judgment, all factual and legal issues that the Klines here assert were clearly decided adversely to them and in favor of the Heymans and their privies. The question of the jurisdiction of the United States District Court for Connecticut to render that decision was itself hotly litigated in Connecticut. Clearly a court of general jurisdiction is competent to and has the power to determine its own jurisdiction. The Klines did not choose to appeal the final Connecticut judgment. The Florida courts correctly concluded that the Klines cannot now collaterally attack the Connecticut judgment or relitigate the issues concluded by it; and their decisions are consistent with the rules established by this Court.

The decisions below conflict with no important rules of federal law, raise no substantial federal question, and are clearly correct. The rule of *Durfee v. Duke* is not limited to cases involving shifting rivers and the location of land. Instead that decision is but an application of the rule that jurisdictional issues once litigated are res judicata, a rule previously applied with respect to divorce jurisdictional issues, *Davis v. Davis* 305 U.S. 32 (1938), *Sherrer v. Sherrer*, 334 U.S. 343 (1948), *in personam* jurisdictional issues, *Baldwin v. Iowa State Traveling Men's Asso.*, 283 U.S. 522 (1931), and jurisdiction over personal property, *Treinies v. Sunshine Mining Co.*, 308 U.S. 66 (1939).

Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

PLAINTIFFS' VERDICT AND SPECIAL INTERROGATORIES ANSWERED BY JURY IN THE UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT.

A-1

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ANNETTE HEYMAN, Individually,
etc., et al,
Plaintiffs
Vs. CIVIL ACTION NO. B-12
ROBERT S. KLINE,
Defendant

PLAINTIFFS' VERDICT

In this case the jury finds for the Plaintiffs in the amount of $23,216.05 and that the Defendant, ROBERT S. KLINE, has no ownership interest in the Tampa property.

BENJAMIN PENNEY
Foreman

Dated: May 25, 1973.

Interrogatory
No. 1:

Did Annette Heyman, personally or through her attorney, Samuel Heyman, deliver in July, 1968, to the defendant, Robert S. Kline, a Xerox copy of an assignment of option to the Tampa property owned by the Estate of Lazarus S. Heyman, with the then present intention that said document would constitute an effective instrument to immediately transfer from the Estate of Lazarus S. Heyman, all of the estate's right in said option and provide for the distribution of a 29% interest to Annette Heyman; 28% interest to Samuel Heyman; 28% interest to Abigail Heyman, and a 15% interest to Robert S. Kline?

Yes ( ) No (X)

Interrogatory
No. 2:

Was the defendant, Robert S. Kline's right to invest and to participate in the Tampa property conditioned upon his promise to faithfully perform his contractual employment obligations to the plaintiff-Heymans?

Yes (X) No ( )

Interrogatory
No. 3:

Did Robert S. Kline *materially* breach his employment agreements with the plaintiffs, Annette Heyman, individually, and as Executrix of the Estate of her late husband, Lazarus S. Heyman, and the Prudential Management Company?

Yes (X) No ( )

Interrogatory
No. 4:

(a) Does Robert S. Kline presently have a right to a 15% interest in the Tampa property?

Yes ( ) No (X)

(b) If so, what do you find was the fair market value of that 15% interest on the date that Mrs. Heyman transferred the property to the Tampa Mall, Inc., by way of a quitclaim deed?

$_____

Interrogatory
No. 5:

If you find that Robert S. Kline materially breached his employment agreements with the Heymans, what do you find to be the monetary damages in dollar value sustained by the Heymans as a result?

Total $23,216.05

Itemize each of the sub-
total amounts awarded for:

(a) salary restitution ..... $ 0
(b) expense restitution ..... $ 2,527.25
(c) expenses resulting from
employees' resignations ..... $ 688.80
(d) injury to employee relations ..... $10,000.
(e) loss of good will ..... $10,000.

Interrogatory
No. 6:

Did the Heymans (the plaintiffs) breach their September 9, 1968, employment agreement with Robert S. Kline?

Kline?

Yes ( ) No (X)

Interrogatory
No. 7:

If you find that the Heymans breached their employment agreements with Robert S. Kline by wrongfully discharging him, what compensatory or special damages were sustained by him as a result thereof?

Total $ None

Interrogatory
No. 8:

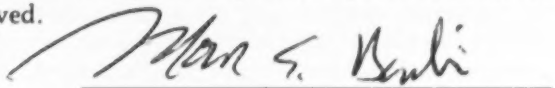
Is Robert S. Kline entitled to receive punitive damages?

Yes ( ) No (X)

If so, state amount awarded: $_____

PROOF OF SERVICE

I hereby certify that on this 21 day of November 1975, three copies of the Brief for Respondents in Opposition and Appendix were mailed, postage prepaid, to John R. Bush, Esq., P. O. Box 1531, Tampa, Florida, Counsel for the Petitioners. I further certify that all parties required to be served have been served.



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